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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/932,456
Filing Date: August 16, 2001
Appellant(s): OEHLER ET AL.

Richard R. Oehler
William G. Kulpa
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 12/12/2007 appealing from the Office action mailed 5/30/2007.

(1) ***Real Party in Interest***

A statement identifying by name the real party in interest is contained in the brief.

(2) ***Related Appeals and Interferences***

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) ***Status of Claims***

The statement of the status of claims contained in the brief is correct.

(4) ***Status of Amendments After Final***

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) ***Summary of Claimed Subject Matter***

The summary of claimed subject matter contained in the brief is correct.

(6) ***Grounds of Rejection to be Reviewed on Appeal***

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

NEW GROUND(S) OF REJECTION

Claims 1-17, 19, 21-32, 34, and 36-41 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.

(7) ***Claims Appendix***

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) ***Evidence Relied Upon***

5,303,383	Neches et al	4-1994
6,961,761	Masuyama et al	11-2005
2001/0037435	Van Doren	11-2001
6,188,759	Lorenzen et al	2-2001

(9) ***Grounds of Rejection***

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1-17, 19, 21-32, 34, and 36-41 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject

matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The limitation of "the portion of the point-to-point transmission infrastructure in each partition being *distinct from and non-overlapping* with the portion of the point-to-point transmission infrastructure in each other partition" recited in claim 1, and similar limitations recited in claims 23, 36 and 39 were not supported in the specification. The specification does not even disclose the terms "distinct" or "non-overlapping"

Claim Rejections - 35 USC 103

3. Claims 1-4, 6-10, 12, 13, 16, 21, 23-26, 28, 31, 36-37, 39, and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant Admitted prior Art (hereafter "AAPA") in view of Neches et al, U.S. Patent 5,303,383 (hereinafter Neches).

4. Neches was cited in the previous office action.

5. As per claims 36 and 39, AAPA teaches the invention substantially as claimed including a computer implemented method for use in a computer system (the Hyper Transport HT architecture) comprising: a plurality of resources including a plurality of processors (Fig. 2) and a distributed point-to-point transmission infrastructure for interconnecting the plurality of processors (spec. page 2, lines 3-8), the method comprising configuring the plurality of resources into at least one partition (building one single, undivided system, spec. page 2, lines 17-23), each

partition comprising a subset of the plurality of resources, the configuring of resources being effected (routing tables, spec., page 2, lines 6-8, 18-21) by enabling operation of at least one dedicated physical link between at least one of the plurality of processors and at least other one of the plurality of processors (spec., page 2, lines 6-8, 20-21), the at least one link corresponding to a portion of the point-to-point transmission infrastructure (spec., page 2, lines 3-8, 20-21).

6. AAPA does not spell out that enabling is according to "a previously specified partitioning schema". AAPA, however, clearly discloses that a primary processor builds routing tables using the information collected from all system resources utilizing a discovery algorithm in order to enable the links between the plurality of processors. The building of a routing table in a specific processor constitutes writing instructions/commands/information about the links between such processor and the other processors (spec. page 2, lines 6-8, 20-21). Obviously, these instructions/commands/information would be based on the primary processor figuring out the topology of the system based on the collected information. Furthermore, AAPA teaches all available resources must be capture utilizing the discovery algorithm prior to building a single, undivided system from the captured resources (or to configure the resources into a partition) (spec. page 2, lines 22-23). As stated in the previous office action, assuming that all system processors 202a-202d of Fig. 2 are responding to the discovery algorithm, then the primary processor would build the routing tables in these processors in accordance with a topology picture of the system showing processors 202a-202d as one partition. The topology picture (defined by utilizing the discovery algorithm) that has to be created by the primary processor in order to be able to build a single, undivided system (as a one partition) and this information is

used to build the routing tables and hence enable the links is certainly considered "a previously specified partitioning schema ". "Previously specified" is interpreted by the examiner as prior to building a single, undivided system or prior to building the routing tables.

7. AAPA does not teach a plurality of partitions. Neches teaches configuring a plurality of resources into a plurality of partitions (col. 35, lines 40-46; col. 36, lines 20-21, and 37-39), each partition comprising a subset of the plurality of resources and a portion of the point-to-point transmission infrastructure (i.e., communication of network 14 uses point-to-point, col. 6, lines 26-27; col. 27, lines 26-27), the portion of the point-to-point transmission infrastructure in each partition being distinct from and non-overlapping with the portion of the point-to-point transmission infrastructure in each other partition (col. 35, lines 42-45; col. 36, lines 11-14; col. 37, lines 22-24, and 37-38).

8. It would have been obvious to one skilled in the art at the time of the invention to combine AAPA teachings and Neches because Neches's teaching of configuring a plurality of resources into a plurality of partitions would enhance system of AAPA by allowing resources to communicate within one partition, and allowing resources communication between partitions of a network.

9. As to claims 1 and 23, the claims are rejected for the same reasons as claims 36 and 39 above. In addition, AAPA discloses a computer system (the Hyper Transport HT architecture) comprising: a plurality of resources including a plurality of processors (Fig. 2), a distributed

point-to-point transmission infrastructure for interconnecting the plurality of processors (spec., page 2, lines 3-8), and at least one partitioning processor for configuring the plurality of resources into at least one partition (building one single, undivided system; primary processor 202a, Fig. 2, spec. page 2, lines 17-23), each partition comprising a subset of the plurality of resources, the at least one partitioning processor (primary processor 202a, Fig. 2) being operable to configure the resources by writing to at least one of a plurality of routing tables associated with the processors (spec., page 2, lines 6-8, 18-21), each routing table representing dedicated physical links between an associated processor and other ones of the plurality of processors, the links corresponding to portions of the point-to-point transmission infrastructure (spec., page 2, lines 6-8, 20-21).

10. AAPA does not teach a plurality of partitions. Neches teaches configuring a plurality of resources into a plurality of partitions (col. 35, lines 40-46; col. 36, lines 20-21, and 37-39), each partition comprising a subset of the plurality of resources and a portion of the point-to-point transmission infrastructure (i.e., communication of network 14 uses point-to-point, col. 6, lines 26-27; col. 27, lines 26-27), the portion of the point-to-point transmission infrastructure in each partition being distinct from and non-overlapping with the portion of the point-to-point transmission infrastructure in each other partition (col. 35, lines 42-45; col. 36, lines 11-14; col. 37, lines 22-24, and 37-38).

11. It would have been obvious to one skilled in the art at the time of the invention to combine AAPA teachings and Neches because Neches's teaching of configuring a plurality of

resources into a plurality of partitions would enhance system of AAPA by allowing resources to communicate within one partition, and allowing resources communication between partitions of a network.

12. As to claims 2, 3, and 24, AAPA includes at least one of a memory device, a memory range, an I/0 bus, I/0 devices coupled to an I/0 bus, and an interrupt mechanism for routing interrupts, I/0 switch, the I/0 switch having one the routing tables associated therewith representing links between the I/0 switch, at least one of the processors, and at least one I/0 resource (inherent in Fig. 2).

13. As to claim 4, AAPA discloses the at least one I/0 resource comprises at least one of an Ethernet device and a SCSI device (Fig. 2).

14. As to claims 6 and 25, AAPA and Neches do not specifically disclose the detail of the distributed point-to-point transmission infrastructure. However, it would have been obvious to one skilled in the art at the time of the invention that coherent or non-coherent Hyper Transport infrastructure is an inherent detail of the Hyper Transport architecture discloses by AAPA (spec. page 2, lines 10-16).

15. As to claims 7 and 8, AAPA and Neches do not specifically disclose the processors topology. However, it would have been obvious to one skilled in the art at the time of the invention that AAPA'S disclosure can support a variety of processor topologies specially if the

routing tables are software programmable. The choice, then, of processor's topology is a matter of design preference.

16. As to claim 9, AAPA discloses the distributed point-to-point transmission infrastructure directly connects each of the processors with every other one of the processors (spec. page 2, lines 3-6).

17. As to claims 10, 21, and 26, AAPA discloses the at least one partitioning processor comprises at least one of the plurality of processors (primary processor 202a, Fig. 2).

18. As to claim 12, AAPA discloses a boot memory for facilitating initialization of the computer system via at least one of the plurality of processors as the at least one partitioning processor (spec. page 2, lines 18-20).

19. As to claims 13 and 28, AAPA discloses that the previously specified partitioning schema is generated in response to an event occurring during operation of the computer system (at initialization, spec. page 2, lines 18-21).

20. As to claims 16 and 31, AAPA discloses the at least one partitioning processor is operable to generate the routing tables upon initialization of the computer system (spec. page 2, lines 18-21).

21. As to claims 37 and 40, AAPA discloses the enabling operation of the at least one link comprises writing to at least one of a plurality of routing tables associated with the processors (spec. page 2, lines 6-8, 18-21).

22. Claims 1, 23, 36, and 39, are further rejected under 35 U.S.C. 103(a), and claims 15 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant Admitted prior Art (hereafter "AAPA") and Neches in view of Masuyama et al, U.S. Patent 6,961,761 (hereafter "Masuyama").

23. Masuyama was cited in the last office action.

24. As to claims 1, 23, 36, and 39, the claims are rejected for the same reasons as disclosed by AAPA in view of Neches above. In addition, Masuyama teaches a system and method for partitioning a computer system where writing routing tables (or enabling links between computers) is according to a previously specified partitioning schema (col. 1, line 62 to col. 2, line 3; col. 3, lines 35-38). It would have been obvious to one skilled in the art at the time of the invention to combine AAPA teaching, Neches, and Masuyama because Masuyama's use of previously specified partitioning schema would improve control of partition of the system discloses by AAPA and Neches (see, for example, Masuyama, col. 1, lines 54-56).

25. As to claims 15 and 30, AAPA and Neches do not apparently disclose a user interface to specify the partitioning schema. Masuyama discloses a user interface for providing an input from

the user (col. 3, lines 11-23; 170 of Fig. 2). It would have been obvious to one skilled in the art at the time of the invention to modify AAPA's and Neches's teachings by adding a user interface with a link to the partitioning processor in order to allow a system management to set a partitioning schema in specific events as needed. This would add enhanced flexibility to AAPA system.

26. Claims 1, 23, 36, and 39 are further rejected under 35 U.S.C. 103(a), and claims 5, 11, 19, 22, 27, 34, 38, and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant Admitted prior Art (hereafter "AAPA") and Neches in view of Van Doren, U. S. Patent Publication Application 2001/0037435.

27. Van Doren was cited in the last office action and in IDS paper filed 2/6/2003.

28. As to claims 1, 23, 36, and 39, the claims are rejected for the same reasons as disclosed by AAPA in view of Neches above. In addition, Van Doren, discloses a system and method for partitioning a computer system where writing routing tables (or enabling links between computers) is according to a previously specified partitioning schema (The elected processor preferably programs the routing table in accordance with programmed I/0 or control status register write operation (0058)). It would have been obvious to one skilled in the art at the time of the invention to combine AAPA's teachings, Neches and Van Doren because Van Doren's use of previously specified partitioning schema would improve control of partition of the system discloses by AAPA and Neches (see, for example, Van Doren, (0010)).

29. As to claim 5, Van Doren discloses each routing table comprises a table of entries; each of selected ones of the entries associating an address of one of the resources with one of the processors and a link for connecting with the one of the processors (Fig. 5).

30. As to claims 11 and 27, Van Doren discloses a separate partitioning entity from the plurality of processors ((0056)-0057)).

31. As to claims 19, and 34, Van Doren discloses the at least one partition comprises a functional subset of the plurality of resources ([0011]; [0015]); and [0046]).

32. As to claim 22, Van Doren discloses the at least one partitioning processor comprises more than one partitioning processor ([0058]).

33. As to claims 38 and 41, Van Doren discloses closing at least one switch associated with the at least one link according to the previously specified partitioning schema ([0033]).

34. Claims 1, 23, 36, and 39 are further rejected under 35 U.S.C. 103(a), and claims 14, 17, 29, and 32 are rejected under 35 U.S.C. 103(a), as being unpatentable over Applicant Admitted prior Art (hereafter "AAPA") and Neches in view of Lorenzen et al, U. S. Patent 6,188,759 (hereafter “Lorenzen").

35. Lorenzen et al. was cited in the last office action and in IDS paper filed 2/6/2003.

36. As to claims 1, 23, 36, and 39, the claims are rejected for the same reasons as disclosed by AAPA in view of Neches above. In addition, Lorenzen, discloses a system and method for partitioning a computer system where writing routing tables (or enabling links between computers "switches") is according to a previously specified partitioning schema (network processor 16 communicates with each switch 12 to collect information and respond with routing recommendation, col. 2, lines 46-49, and provides each switch with routing protocols in response to various factors, including congestion and equipment operation, col. 2, lines 55-60, i.e. a previously specified partitioning schema would be a result of collecting this information and in effect will corresponds to a definition of the resources that are decided from congestion and equipment operation). It would have been obvious to one skilled in the art at the time of the invention to combine AAPA, Neches and Lorenzen because Lorenzen's use of previously specified partitioning schema would improve control of partition of the system discloses by AAPA and Neches (see, for example, col. 1, lines 18-30).

37. As to claims 14, 17, 29, and 32, AAPA and Neches do not disclose that the previously specified partitioning schema is generated in response to failure of at least one of the processors, a change in operating load associated with at least one of the resource, passage of a period of time, use of a particular software, and a change in available power resource. Lorenzen, on the other hand, discloses dynamic generation to the specified partitioning (routing) schema while the

system is in operation (col. 1, lines 45-46) in accordance to different events (col. 1, lines 60-65; col. 4, lines 5-1 1) and which obviously may include any variations of operational event.

(10) ***Response to Argument***

The examiner summarizes the various points raised by the appellant and addresses replies individually.

Appellant argued that:

(1) The technique taught by the Neches reference is not compatible in its disclosed form with the system shown in Fig. 2 of the present application, the references may not be properly combined.

(2) Given the similarity between Masuyama's interconnect and Neches's MIN, the combination of Masuyama with AAPA must fail for reasons similar to those discussed above with reference to the combination of AAPA and Neches.

(3) Not only is the motivation to combine lacking, but the partitioning technique of Van Doren is not compatible with the system described with references to Fig. 2 of the present application, the references may not be properly combined.

(4) Lorenzen fails to teach partitioning of resources in a computer system

(5) The combination of Lorenzen with AAPA and Neches fails to teach "a plurality of partitions" in which the portion of the point-to-point

transmission infrastructure in each partition is "distinct from and non-overlapping with the portion of the point-to-point transmission infrastructure in each other partition."

38. **In reply** to argument (1), it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Neches is either in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned. According to page 3, lines 6-7 of the specification, the particular problem with which the applicant was concerned is to provide techniques by which computer system resources may be more flexibly and precisely partitioned. Furthermore, according to page 7, lines 6-8 of the specification, the field of applicant's endeavor is any multi-processor architecture having point-to-point communication among its processors. Similarly, Neches's teaching of configuring of superclusters, which are partition of resources such as processors (PMs 12), I/O switch nodes 16, network 14, etc. (col. 35, lines 40-46; col. 37, lines 22-24) is pertinent to the particular problem with which the applicant was concerned. Also, Neches is in the field of multi-processors (PMs 12) architecture (fig. 1) having point-to-point communication among the processors (col. 6, lines 26-39). The combination of Applicant Admitted Prior Art (AAPA) and Neches teaches the limitations recited in independent claims 1, 23, 36 and 39 because it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of AAPA and Neches. As stated on page 4,

paragraph 9 of the office action mailed on 5/30/2007, "It would have been obvious to one skilled in the art at the time of the invention to combine AAPA teachings and Neches because Neches's teaching of configuring a plurality of resources into a plurality of partitions would enhance system of AAPA by allowing resources to communicate within one partition, and allowing resources communication between partitions of a network." According to the rationale of *KSR Int'l Co. v. Teleflex Inc.*, "Use of known technique to improve similar devices (methods, or products) in the same way" is applicable in this combination. Specifically, Neches teaches partitioning of multi-processors (PMs 12) into plurality of superclusters (i.e., partitions) (col. 36, lines 40-46). This known technique of partitioning can improve a similar method or system of a single partition disclosed in AAPA (see spec, page 2, lines 17-23) into a plurality of partitions (i.e., superclusters). This way, communication within one subset is prevented from interfering with communication in any other subset, yet communication between superclusters is maintained (see Neches, col. 35, lines 40-46).

39. **In reply** to argument (2), as stated above, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Masuyama is either in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned. Masuyama's teaching of domain partitioning for a multi-node computer system (abstract) (i.e., partitioning of computer system resources) is pertinent to the particular problem with which the

applicant was concerned. The combination of Applicant Admitted Prior Art (AAPA), Neches and Masuyama teaches the limitations recited in independent claims 1, 23, 36 and 39 because it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of AAPA, Neches and Masuyama. As stated on page 8, paragraph 25 of the office action mailed on 5/30/2007, "It would have been obvious to one skilled in the art at the time of the invention to combine AAPA teaching, Neches, and Masuyama because Masuyama's use of previously specified partitioning schema would improve control of partition of the system discloses by AAPA and Neches (see, for example, Masuyama, col. 1, lines 54-56)." According to the rationale of *KSR Int'l Co. v. Teleflex Inc.*, "Use of known technique to improve similar devices (methods, or products) in the same way" is applicable in this combination. Specifically, Masuyama teaches partitioning of multi-nodes system into plurality of domain partitions (col. 1, lines 31-34). This known technique of partitioning can improve a similar method or system of a single partition disclosed in AAPA (see spec, page 2, lines 17-23) into a plurality of partitions (i.e., domains).

40. **In reply** to argument (3), as stated above, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Van Doren is either in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned. Van Doren's teaching of partitioning address space into a plurality of partitions in a multi-processors

system (abstract; [0031]) (i.e., partitioning of computer system resources) is pertinent to the particular problem with which the applicant was concerned. The combination of Applicant Admitted Prior Art (AAPA), Neches and Van Doren teaches the limitations recited in independent claims 1, 23, 36 and 39 because it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of AAPA, Neches and Van Doren. As stated on pages 9-10, paragraph 29 of the office action mailed on 5/30/2007, "It would have been obvious to one skilled in the art at the time of the invention to combine AAPA's teachings, Neches and Van Doren because Van Doren's use of previously specified partitioning schema would improve control of partition of the system discloses by AAPA and Neches (see, for example, Van Doren, (0010))." According to the rationale of *KSR Int'l Co. v. Teleflex Inc.*, "Use of known technique to improve similar devices (methods, or products) in the same way" is applicable in this combination. Specifically, Van Doren teaches partitioning of address space in a multi-nodes system into plurality of address space partitions (abstract; [0031]). This known technique of partitioning can improve a similar method or system of a single partition disclosed in AAPA (see spec, page 2, lines 17-23) into a plurality of partitions (i.e., hard partitions).

41. **In reply** to argument (4), Lorenzen is merely relied upon for teaching a system for partitioning a computer system (col. 13, lines 25-35) where writing routing tables is according to a previously specified partitioning schema (network processor 16 communicates with each switch 12 to collect information and respond with routing recommendation, col. 2, lines 46-49, and provides each switch with routing protocols in response to various factors, including

congestion and equipment operation, col. 2, lines 55-60, i.e. a previously specified partitioning schema would be a result of collecting this information and in effect will corresponds to a definition of the resources that are decided from congestion and equipment operation). It is the combination of AAPA, Neches and Lorenzen that teach partitioning of resources in a computer system. Specifically, AAPA teaches configuring the plurality of resources including a plurality of processors (fig. 2) into one partition (see background of the invention in spec. page 2, lines 17-23) (i.e., single undivided system). In addition, Neches teaches configuring of superclusters, which are partition of resources includes physical link (e.g., optical fibers 24, col. 5, lines 17-23) supporting the point-to-point protocol communication between PMs (col. 6, lines 26-39) (i.e., point-to-point transmission infrastructure).

42. **In reply** to argument (5), as stated in the New Grounds of Rejection above, it is noted that the limitation of "the portion of the point-to-point transmission infrastructure in each partition being *distinct from and non-overlapping* with the portion of the point-to-point transmission infrastructure in each other partition" recited in claim 1, and similar limitations recited in claims 23, 36 and 39 were not supported in the specification. The specification does not even disclose the terms "distinct" or "non-overlapping". The combination of AAPA, Neches and Lorenzen teaches "a plurality of partitions" in which the portion of the point-to-point transmission infrastructure in each partition is "distinct from and non-overlapping with the portion of the point-to-point transmission infrastructure in each other partition." Specifically, Neches teaches configuring of superclusters, which are partition of resource includes physical link (e.g., optical fibers 24, col. 5, lines 17-23) supporting the point-to-point protocol

communication between PMs (col. 6, lines 26-39) (i.e., configuring the plurality of resources into a plurality of partitions, each partition comprising a subset of the plurality of resources and a portion of the point-to-point transmission infrastructure). Neches teaches the superclusters are partitions of network 14 including independent subsets of PMs 12. Communication within one subset is prevented from interfering with communication in other subset (col. 35, lines 40-46), wherein the communication include point-to-point communication between PMs (col. 6, lines 26-39). Each supercluster must include independent subset of infrastructure for supporting the point-to-point communication (independent facilities such as PMs 12, switch nodes 16, and optical fiber 24 connecting PMs via switch nodes) within the subset. This mean a supercluster with its independent subset of infrastructure must be distinguishable from another supercluster with its own independent subset of infrastructure in order for each supercluster to support communication within its subset. Neches further teach communication among PMs in one supercluster will not overlap with communication in another supercluster (col. 36, lines 11-14). This means the independent subset of infrastructure for supporting the point-to-point communication among PMs in a supercluster is non-overlapping with independent subset of infrastructure for supporting the point-to-point communication in another supercluster (i.e., the portion of the point-to-point transmission infrastructure in each partition being distinct from and non-overlapping with the portion of the point-to-point transmission infrastructure in each other partition).

(11) ***Related Proceeding(s) Appendix***

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

(12) ***Conclusion***

For the above reasons, it is believed that the rejections should be sustained.

This examiner's answer contains a new ground of rejection set forth in section **(9)** above. Accordingly, appellant must within **TWO MONTHS** from the date of this answer exercise one of the following two options to avoid *sua sponte* **dismissal of the appeal** as to the claims subject to the new ground of rejection:

(1) **Reopen prosecution.** Request that prosecution be reopened before the primary examiner by filing a reply under 37 CFR 1.111 with or without amendment, affidavit or other evidence. Any amendment, affidavit or other evidence must be relevant to the new grounds of rejection. A request that complies with 37 CFR 41.39(b)(1) will be entered and considered. Any request that prosecution be reopened will be treated as a request to withdraw the appeal.

(2) **Maintain appeal.** Request that the appeal be maintained by filing a reply brief as set forth in 37 CFR 41.41. Such a reply brief must address each new ground of rejection as set forth in 37 CFR 41.37(c)(1)(vii) and should be in compliance with the other requirements of 37 CFR 41.37(c). If a reply brief filed pursuant to 37 CFR 41.39(b)(2) is accompanied by any amendment, affidavit or other evidence, it shall be treated as a request that prosecution be reopened before the primary examiner under 37 CFR 41.39(b)(1).

Extensions of time under 37 CFR 1.136(a) are not applicable to the TWO MONTH time period set forth above. See 37 CFR 1.136(b) for extensions of time to reply for patent

applications and 37 CFR 1.550(c) for extensions of time to reply for ex parte reexamination proceedings.

Respectfully submitted,

/P. C. L./

Patent Examiner, Art Unit 2152

A Technology Center Director or designee must personally approve the new ground(s) of rejection set forth in section (9) above by signing below:

Conferees:

/Bunjob Jaroenchonwanit/

Supervisory Patent Examiner, Art Unit 2152

/JEFF PWU/

Supervisory Patent Examiner, Art Unit 2146